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8 UNITED STATES COURT OF APPEALS
9 FOR THE NINTH CIRCUIT
10

11 FRANK HALE BENNETT)
Appellant)

12 vs)

No. 21779)

13 DALLAS ALLEN, et al.,)
and the PEOPLE OF THE)
14 STATE OF CALIFORNIA)
15

APPELLANTS OPENING BRIEF ON APPEAL

16 PROCEDURAL STATEMENT
17

18 Appellant FRANK HALE BENNETT, was convicted and sentenced for a
19 violation of Section 653 f of the California Penal Code (Solicitation to
20 commit a felony).

21 , That said sentence was rendered on April 9, 1965, by the Honorable
22 Leo A. Deegan, Judge of the Superior Court of California, in and for the
23 County of Riverside.

24 That Appellant was sentenced to State Prison, where he is presently
25 confined at Tehachapi, California P.O. Box 107.
26

1 The first point that Appellant raises on Appeal is the ineffective aid
2 of counsel. The right to counsel not having adverse feelings.

3 The denial of adequate counsel at all stages, as guaranteed by the
4 Sixth and Fourteenth Amendments to the United States Constitution.

5 The constitutional right to counsel becomes more meaningful and
6 compelling when it carries with it the Constitutional protections of
7 safeguarding the rights of each member of society.

8 This broadening of the Constitutional *RULE* fits squarely with the facts
9 of the case at bench.

1 Appellant plead guilty after he was mentally coerced and induced to
2 plead guilty by his Attorney Robert Garst, and indirectly by Roland Wilson
3 (Assistant District Attorney) and the Honorable Judge Rutch, the three of
4 them conspiring to induce Appellant to plead guilty by offering Appellant
5 a deal, said deal being probation and at the most county jail time.
6 (See transcript of record on appeal on page 39 Lines 16-22 where it shows
7 by Mr Garst's own admission on his answer to complaint that a partial deal
8 was made).

9 Said admission to a certain extent only confirms Appellants allegation
0 that he was coerced into pleading guilty.

1 Appellant contends that at the very least he should have been protected
2 by the provisions of the California Conditional Plea.

3 A defendant is sometimes willing to plead guilty to a lesser degree of
4 a particular offense or to the particular offense on condition that the
5 lesser punishment (eg. County Jail rather than State Prison, will be imposed)

Formerly this could not be done, but the Legislature enacted in 1955 and 1957, a provision for such a conditional plea by the defendant, with the consent of the District Attorney expressed in open court, and the approval of the court. (See transcript of record on appeal page 39. Mr. Garsts answer to complaint lines 16-22, whereby his own admission a deal was made.

That Mr. Garst (Appellants Attorney) was secretly representing appellants wife in a divorce proceeding against appellant without appellants knowledge.

That the above stated is sufficient in itself to constitute an interest by defense attorney that was adverse to appellant.

That had said attorney properly and adequately without any adverse feelings towards appellant, represented appellant to the best of his ability and within the Professional Code of Ethics, he would not have asked appellant to plead guilty.

That such scheme and trickery is a direct and gross violation of appellants right to adequate counsel as guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution.

"An attorney in the representation of his client in a criminal case in order to fulfill the requirements of the Sixth Amendment to the United States Constitution, SHOULD HAVE NO CONFLICT OF INTEREST, AND MUST DEVOTE HIS FULL AND FAITHFUL EFFORTS TO THE DEFENSE OF HIS CLIENT!

See JOHNS v SNYTH; D.C. Va. (1959) 176 F. Supp. 949.

"Conflict of interest on part of counsel representing both accused and another defendant may be such as to deprive accused of the effective

1 assistance of counsel guaranteed by the Sixth Amendment to the United States
2 Constitution, and in determining whether such deprivation has occurred, it is
3 immaterial whether such counsel has been appointed by the court or selected
4 by the accused in absence of facts constituting waiver of rights to such
5 assistance (See; CRAIG v U.S. C.A. Ohio 217 F. 2d 355, also BUTZMAN v
6 UNITED STATES, C.A. Ohio (1953) 205 F 2d. 343.

7 8 II

9 That the Honorable Leon R. Yankwichs order granting motion to dismiss
0 complaint, filed by Thomas C. Lynch, for the defendants, Ben Clark, William
1 O. Mackey, Roland Wilson, John Hamilton, Judge E.M. Rich, Judge Leo A Deegan,
2 Frank Bland, James Willis, the Adult Authority of the State of California,
3 G.P. Lloyd and the People of the State of California, should be reviewed by
4 this Honorable Court for the following reasons to wit:

5 That the above named defendants willfully, deliberately and maliciously,
6 conspired to deprive appellant of his freedom under color of State Law.

7 An action under any of the Civil Rights Statutes must allege acts done
8 under of State Law. 18 U.S.C.A. Sections 241-242; 28 U.S.C.A. Sections 1331,
9 1343; 42 U.S.C .A. Sections, 1981-1988, 1983, 1985.

0 Elements of a cause of action for a conspiracy under color of any statute
1 ordinance, etc. to deprive a person of any right, privileges or immunities
2 secured by the constitution and laws are that defendants conspired or acted
3 jointly or in concert, that defendants acted under color of State Law or
4 authority, a discriminatory intent, that defendants subjected appellant to
5 a deprivation of a right, privilege or immunity. (42 U.S.C.A. Sec. 1983)

6 That the order signed by Judge Yankwich on November 17, 1966 order

1 granting motion to dismiss complaint, states in pertinent part, "The
2 defendant Judges Prosecutors, Prison Officials and People of the State of
3 California have immunity from plaintiffs suit".

4 Appellants point of appeal to this Honorable Court is that the above
5 named defendants are guilty of conspiracy to deprive appellant of his
6 freedom.

7 Appellant refers this Honorable Court to the Case of UNITED STATES vs
8 CECIL RAY PRICE -- U.S.--, 16 L ed 2d. 267, 86 S ct. ___ Decided on March 28,
9 1960, which states in part: "For the purpose of 18 U.S.C. Section 242,
10 making it a federal offense wilfully to deprive any person under color of
11 law or any rights, privileges or immunities secured or protected by the
12 Constitution or laws of the United States, private persons, jointly engaged
13 with State Officials in the prohibited action, are acting "Under Color of
14 Law"; To act "Under Color of Law" does not require that the accused be an
15 officer of the State, it being sufficient that he is a wilful participant
16 in joint activity with the state or its agents.

17 The Federal Civil Rights Statute (18 U.S.C. Sec 241), which makes a
18 conspiracy to interfere with a citizens free exercise or enjoyment of any
19 right or privileges secured to him by the Constitution or laws of the United
20 States a criminal offense, includes right or privilege protected by the
21 Fourteenth Amendment, and extends to conspiracies otherwise within the scope
22 of the statute, participated in by officials alone or in collaboration with
23 private persons.

24 Appellant contends that in view of the above Points and Authorities that
25 De'Las Allen (Defendant) comes within the scope of an agent of the State in
26 that he aided the Sheriff in an entrapment against appellant, therefore making

him liable, pursuant to 18 U.S.C. Section 242, along with the defendants herein named who are State and County Officials, of the State of California.

That Furthermore Judge Yankwich did not even consider the fact, that Dallas Allen, purposely failed to answer the complaint filed against him as required by the court on its own motion, a response was ordered to complaint on the Courts own motion by October 24, 1966.

That a judgment by default should have been ordered against Dallas Allen, for failing to answer complaint according to the summons filed on August 24, 1966 (See transcript of record on appeal, Page 99).

QUESTION PRESENTED FOR THIS HONORABLE COURTS CONSIDERATION IN REGARDS TO

Robert Garst, Ben Clark, William O. Mackey, Roland Wilson, John Hamilton, Judge Ritch, Judge Deegan, Frank Bland, James Willis, and Dallas Allen. DEFENDANTS:

Why was Appellant removed from the Corona Municipal Court Jurisdiction that had original Jurisdiction over him, and taken to the Riverside Municipal Court fifteen (15) miles away?

Appellant was arrested in the City of Corona where the crime was alleged to have taken place.

Corona California has its own Police force and Municipal Court. Why were the Corona Police Department not informed of said crime by appellants so that they could participate in the arrest as is the usual practice, for law enforcement agencies who come from other areas to make an arrest.

1 APPELLANT BELIEVES THAT THIS CASE RAISES IMPORTANT QUESTIONS OF LAW
2 INVOLVING JURISDICTION:

3 The most important is jurisdiction of the "subject matter", no person
4 can be punished for a public offense, except upon a legal conviction in a
5 court having jurisdiction thereof. (P.C. 681).

6 No territorial jurisdiction (See In re WYATT, (1931) 114 C.M. 557, 562,
7 (Justice Court offense committed outside township).

8
9 Local Ordinances: "Each Municipal Court shall have exclusive jurisdiction
10 in all cases involving the violation of ordinances of Citys or Towns
11 situated within the district in which such court is established (P.C. 11462)

12
13 An omission by counsel cannot confer jurisdiction on court which in
14 fact has no jurisdiction of cause-- -LEWIS v SUPERIOR COURT in and for
15 SAN BERNARDINO COUNTY, 69 P. 2d 220.

16 17 CONCLUSION

18 Appellant states: That defendants use of undue influence to coerce
19 appellant to plead guilty, by offering a deal, merely as a means of getting
20 appellant to plead guilty, deprived appellant of his Constitutional Right
21 to a trial by jury. Such arbitrary actions by State Officials under
22 "Color of State Law", is as to abort one of the fundamental concepts of our
23 American System of Justice.

24
25 The conviction and sentence of appellant ought to be reversed due to
26 lack of proper representation, and collusion among State Officials.

1 That Robert Garst (defense attorney) acquired a professional interest
2 in his role of attorney, alien and adverser to appellant in that said attorney
3 Robert Garst solicited appellants wife for the purpose of obtaining a
4 divorce for appellants wife from appellant.

5
6 The case herein submitted shows planned coercion, and colusion among
7 State Officials, and the sentencing court had no legal jurisdiction to
8 sentence appellant, to prison and keep him in prison as long as they can.

9
10 The crime was alleged to have been committed in the Corona Municipal
11 Court Judicial District, but was transferred to the Riverside Municipal Court
12 by error or because of a fear that appellant might have received a fair trial
13 had he been arraigned before the Corona Municipal Court. (Appellants home
14 town, resident for over 20 years)

15 In addition to the illegality of the arrest and subsequent imprisonment
16 the court itself, participated in making a "deal" with appellant in chambers
17 in order to assure the case from coming to trial.

18 Appellants attorney in violation of his own code of ethics allowed
19 himself to represent the appellants wife in a proposed action of law against
20 first and prime client.

21 Appellant submits that the foregoing represents a grandiose scheme, by
22 which the officers of the law (Sheriffs Dept) in colusion with the District
23 Attorney, on the report of a disreputable "informant" who had an ulterior
24 motive of his own, conspired together for the purpose of depriving appellant
25 his liberty under "Color of Law".

26 Appellant respectfully submits to this Honorable Court that he is a

1 layman of law, and that there is no facility provided by this Institution
2 for the study of Federal Law, therefore appellant submits his Opening Brief
3 hoping that this Honorable Court will consider this fact in determining a
4 disposition of the foregoing matter.

5 It was observed in part in : GTDFON v WATNWRIGHT; 372 U.S. 355 (1963)
6 "Laymen cannot be expected to know how to protect their rights where dealing
7 with practiced and carefully counselled adversaries".

8
9 In PROCE v JOHNSTON; 344 U.S. 266; It is stated, that prisoners are
10 often unlearned in law and are unfamiliar with the complicated rules of
11 pleading since they so often act as their own counsel--we cannot impose
12 upon them the same standards of legal art as we might on the legal Profession.

13
14 Appellant respectfully requests that this Honorable Court bear the
15 foregoing in mind in considering appellants brief on appeal.

16
17 It is respectfully submitted that, as a matter of law, the judgement
18 should be reversed in this particular.

19
20 Respectfully submitted

21 Frank Hale Bennett
22 In Propria Persona

23 Subscribed and sworn to before me

24 this 24 day of July 1967

25 _____
26 Notary Public

My commission expires _____

